

*See Attached*

*(13)*  
*7/24/01*  
*Se*

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DIANNA LYNN HARRIS,  
Plaintiff,

v.

PENNSYLVANIA BOARD OF  
PROBATION AND PAROLE, et al.,  
Defendants.

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CIVIL ACTION NO. 1:CV-01-270  
(Judge Kane)

**FILED**  
**HARRISBURG, PA**

**JUL 24 2001**

**MARY E. D'ANDREA, CLERK**  
Per *[Signature]*

**MEMORANDUM AND ORDER**

Before the Court is Plaintiff's motion to remand. The motion has been fully briefed and is ripe for disposition. For the reasons set forth below, Plaintiff's motion to remand will be denied.

**I. Background**

Plaintiff filed a complaint in the Court of Common Pleas of Dauphin County on January 9, 2001, alleging federal and state discrimination claims against the Pennsylvania Board of Probation and Parole and a number of its employees in their individual and professional capacities. The complaint was served on January 16, 2001, and on February 12, 2001, counsel for Defendants filed a notice of removal action based upon federal question jurisdiction pursuant to Plaintiff's federal claims and supplemental jurisdiction over her state law claims emerging from the same facts. Plaintiff filed her timely motion for remand on March 2, 2001.

**II. Discussion**

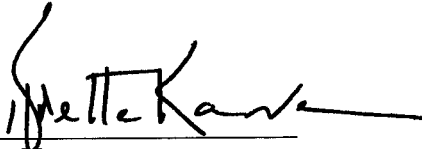
Plaintiff's arguments for remand rest upon the propriety of Defendant's reservation, in its removal petition to this Court, of its right to assert Eleventh Amendment immunity. As the U.S.

Supreme Court in Wisconsin Dep't Corr. v. Schacht, 524 U.S. 381 (1998) ruled, the presence of claims against which Defendants may assert Eleventh Amendment immunity does not destroy removal jurisdiction. Id. at 2052. Since this Court would have had original jurisdiction to hear this case had Plaintiff originally filed it here, Defendants may remove it here. Id. at 2053. Whether by choosing to defend in this Court Defendants waived their Eleventh Amendment rights is a question that will not arise unless and until Defendants attempt to assert such immunity.

### III. Order

**AND NOW**, for the reasons discussed above, **IT IS ORDERED THAT:**

Plaintiff's motion for remand (Doc. No. 4) is **Denied**.

  
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Yvette Kane  
United States District Judge

Dated: July 23<sup>rd</sup>, 2001.

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

\* \* MAILING CERTIFICATE OF CLERK \* \*

July 24, 2001

Re: 1:01-cv-00270 Harris v. Pennsylvania Board o

True and correct copies of the attached were mailed by the clerk  
to the following:

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cc:		
Judge	( <input checked="" type="checkbox"/> )	( ) Pro Se Law Clerk
Magistrate Judge	( )	( ) INS
U.S. Marshal	( )	( ) Jury Clerk
Probation	( )	
U.S. Attorney	( )	
Atty. for Deft.	( )	
Defendant	( )	
Warden	( )	
Bureau of Prisons	( )	
Ct Reporter	( )	
Ctroom Deputy	( )	
Orig-Security	( )	

Federal Public Defender ( )  
Summons Issued ( ) with N/C attached to complt. and served by:  
U.S. Marshal ( ) Pltf's Attorney ( )  
Standard Order 93-5 ( )  
Order to Show Cause ( ) with Petition attached & mailed certified mail  
to: US Atty Gen ( ) PA Atty Gen ( )  
DA of County ( ) Respondents ( )  
Bankruptcy Court ( )  
Other \_\_\_\_\_ ( )

MARY E. D'ANDREA, Clerk

DATE: \_\_\_\_\_

7/24/01

BY: \_\_\_\_\_

Deputy Clerk